

D.LAW, INC.
Emil Davtyan (SBN 299363)
emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
Antonia McKee (SBN 344511)
a.bliznets@d.law
450 N Brand Blvd, Suite 840
Glendale, CA 91203
Telephone: (818) 962- 6465
Facsimile: (818) 962-6469

Attorneys for Plaintiff BESSIE R. FITE, on behalf
of herself and others similarly situated

(Additional counsel listed on following page)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

BESSIE R. FITE, an individual, on behalf of
herself and others similarly situated,

Plaintiff,

vs.

KOELSCH SENIOR COMMUNITIES,
LLC, a Washington limited liability
company; FRESNO MEMORY CARE,
LLC, a Delaware limited liability company;
CEDARBROOK MEMORY CARE
COMMUNITY, a California business entity,
form unknown; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23CV010084

CLASS ACTION

Assigned for All Purposes To:
Hon. Laurie A. Damrell

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of Enoch J.
Kim; Declaration of Brady Briggs; Declaration
of Brett Sutton; Declaration of Bessie R. Fite;
Declaration of Jennifer Martinez; and
[Proposed] Order]*

Hearing Information:

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Dept.: 22

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Trial Date: None Set: None Set

1 SUTTON HAGUE LAW CORPORATION, P.C.
S. Brett Sutton (143107)
2 Jared Hague (251517)
Brady Briggs (310934)
3 5250 N. Palm Ave Suite 222
Fresno, CA 93704
4 Telephone: (559) 325-0500
Facsimile: (559) 981-1217
5 Attorneys for Plaintiff JENNIFER MARTINEZ, on behalf
of herself and others similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs' counsel has reviewed the Court's "Checklist for Approval of Class Action and/or
4 PAGA Settlements" and Local Rule 2.99.05 and certifies that this briefing complies with the
5 checklist. (*See* Declaration of Enoch J. Kim ("Kim Decl."), (Kim Decl., ¶ 1).)

6 Plaintiff Bessie R. Fite and Plaintiff Jennifer Martinez ("Plaintiffs") seek preliminary
7 approval of a putative class and representative action settlement with Defendant Koelsch Senior
8 Communities, LLC, and Defendant Fresno Memory Care, LLC dba Cedarbrook Memory Care
9 Community ("Defendants") (Plaintiffs and Defendants are collectively referred to herein as "the
10 Parties") on behalf of themselves and a proposed class of all current and former California non-
11 exempt employees of Defendants and/or any of the California Entities who performed work between
12 August 9, 2019, and ("Class" or "Settlement Class"). After participating in mediation, the Parties
13 reached a settlement in the gross amount of \$2,250,000.00 to resolve the instant action, subject to
14 this Court's final approval.

15 Pursuant to California Rules of Court 3.769(d) and (e), Plaintiffs respectfully request that
16 this Court grant preliminary approval of the proposed settlement agreement between the Parties,
17 the terms of which are set forth in the Parties' Joint Stipulation of Class Action and PAGA
18 Settlement ("Settlement Agreement" or "Settlement"). *See* Kim Decl, Exhibit 1). The Settlement
19 was reached after the Parties engaged in formal and informal discovery and investigation,
20 participated in mediation with a skilled mediator, and negotiated at arms-length through experienced
21 counsel on both sides.

22 As discussed below, the proposed Settlement satisfies all criteria for preliminary approval
23 under California law, falls well within the range of reasonableness, and is in the best interests of the
24 Class. Accordingly, Plaintiffs respectfully request that the Court: (1) grant preliminary approval of
25 the Settlement; (2) conditionally grant certification of the proposed Class solely for the purposes of
26 Settlement, (3) approve the appointment of Simpluris, Inc. ("Simpluris") as Settlement
27 Administrator, (4) authorize the Settlement Administrator to send the Notice of Class Action and
28 PAGA Settlement ("Class Notice"), attached to the Settlement Agreement as Exhibit A, to the

Class Members, (5) appoint Plaintiffs as the Class Representatives and Plaintiffs' Counsel as Class Counsel, (6) and schedule a final fairness and approval of settlement hearing.

II. BACKGROUND OF PLAINTIFFS' ALLEGATIONS

Here, Plaintiffs allege that Defendants adopted a uniform set of policies and practices applicable to all Settlement Class Members that resulted in Defendants' alleged failure to pay for all hours worked at applicable pay rates, failure to provide meal and/or rest periods or to pay the corresponding meal and/or rest period premiums, failure to provide accurate itemized wage statements, failure to properly calculate, provide and pay paid sick leave, failure to properly calculate, provide and pay COVID-19 supplemental paid sick leave, failure to reimburse business expenses, failure to timely pay wages due during employment, and failure to pay all wages due upon termination of employment. Some of the salient factual allegations underlying Plaintiffs' claims, described in greater detail herein, are as follows:

- That Defendants' electronic timekeeping system both automatically deducted Class Members' hour worked for a meal period of 30 minutes and rounded their total hours worked down to the nearest quarter hour to their detriment;
- That Defendants uniformly required Class Members to perform work off the clock before their scheduled shift start times in the form of COVID screenings before clocking in;
- That Defendants required Class Members to wait to be contacted by Defendants in an on-call status to see if they would be required to cover for absent employees;
- That meal periods were often not timely provided, were frequently interrupted, and that Defendants' uniformly-applied electronic timekeeping system would not permit Class Members to record a meal period end time that was less than 30 minutes even if their meal period was less than 30 minutes in duration;
- That Defendants uniformly required Class Members to use their personal cellular phones for work purposes, and maintain uniforms with company logos without reimbursement;
- That Defendants uniformly paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Plaintiff and Class Members but Defendants failed to include these forms of remuneration in the regular rate of pay.

1 Plaintiffs detail herein the commonality and typicality of their claims that justify class treatment for
2 settlement purposes, and the corresponding reasonableness of the Settlement based on Plaintiffs’
3 allegations and Defendants’ defenses to those allegations.

4 **III. STATUS OF THE LITIGATION**

5 **A. Procedural History**

6 Plaintiffs worked as hourly-paid, non-exempt employees for Defendants and seek to
7 represent approximately 1,636 current and former California non-exempt employees of Defendants
8 and/or any of the California Entities who performed work during the Class Period. (Kim Decl., ¶ 3.)
9 Defendants are in the for-profit business of providing luxury independent living, assisted living, and
10 memory care housing to senior citizens in eight different states, including California. (*Id.*)
11 Defendants own and operate senior living communities in Sacramento, Stanislaus, and Fresno
12 counties. (*Id.*) Class Members include caregivers, medical technicians, and resident aids, and other
13 similar and related positions pertaining to providing long term care to Defendants’ residents at
14 Defendants’ communities in California. (*Id.*)

15 On August 10, 2023, Plaintiff Bessie R. Fite commenced a Class Action by filing a
16 Complaint alleging causes of action against Defendant for failure to pay minimum wages, failure to
17 pay wages and overtime under Labor Code 510, meal period liability under Labor Code 226.7, rest-
18 break liability under labor code 226.7, violation of Labor Code 226, violation of Labor Code 221,
19 violation of Labor Code 204, Violation of Labor Code 203, failure to maintain records required
20 under Labor Code 1174, 1174.5, and violation of California Business & Professions Code sections
21 17200, et seq. (the “Class Action”). (Kim Decl., ¶ 4.) On September 21, 2023, Defendants removed
22 the Class Action to the United States District Court, Eastern District, Sacramento Division. (*Id.*)

23 Plaintiff Fite submitted a PAGA notice (LWDA-CM-973978-23) to the Labor and
24 Workforce Development Agency (“LWDA”) on August 9, 2023. (Kim Decl., ¶ 5.) On October 18,
25 2023, Plaintiff Fite filed a PAGA representative action against the same Defendants named in the
26 Class Action (the “Action”).

27 On October 24, 2023, Plaintiff Jennifer Martinez filed a PAGA Representative Action
28 against the same Defendants, entitled *Jennifer Martinez v. Koelsch Senior Communities LLC, et al.*,

1 pending in the Superior Court of California for the County of Fresno, Case No. 23CECG04446, and
2 JAMS Arbitration proceeding, Reference No. 5130000505, entitled *Jennifer Martinez v. Koelsch*
3 *Senior Communities LLC, et al.*, (collectively the “Martinez Actions”), wherein Plaintiff Martinez
4 alleged similar overlapping theories of liability as Plaintiff Fite. On June 26, 2025, Plaintiff Fite
5 filed her First Amended Complaint (“Operative Complaint”) in the instant Action, which added
6 Jennifer Martinez as a named plaintiff and consolidated claims and allegations in the *Martinez*
7 Actions for purposes of settlement. (*Id.*)

8 Plaintiffs contend that Defendants violated California’s wage and hour laws by failing to pay
9 minimum wages, failing to pay overtime wages, failing to pay double-time wages, failing to pay for
10 off-the-clock work, failing to provide meal periods or meal period premium payments, failing to
11 provide rest periods or rest period premium payments, failing to provide accurate itemized wage
12 statements, failing to properly calculate, provide and pay paid sick leave, failing to properly
13 calculate, provide and pay COVID-19 supplemental paid sick leave, failing to reimburse business
14 expenses, failing to timely pay wages due during employment, and failing to pay all wages due upon
15 termination of employment. (*Id.* at ¶ 6.)

16 **B. Investigation**

17 Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched
18 the facts and circumstances underlying the pertinent issues and applicable law. (*Id.* at ¶ 7.) This
19 required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition to
20 the above-described research into the various legal issues involved in the case. (*Id.*) After filing the
21 lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the
22 action, including (1) conducting formal and informal discovery and meeting and conferring with
23 defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-
24 related policies; (3) reviewing Plaintiffs’ personnel file and other documentation; (4) interviewing
25 Plaintiffs regarding potential Class Members; (5) researching the applicable law and potential
26 defenses; (6) constructing damage models based on interpretations of California law and the facts
27 and numbers provided by Defendants; and (7) reviewing information provided by Defendants in
28 response to formal and multiple rounds of informal discovery and in advance of the mediation. (*Id.*)

1 The Parties conducted their own evaluations of the potential recoveries based on the claims alleged
2 in the Action, including consulting experts. (*Id.*)

3 Defendants, for their part, vigorously contested liability, the amount of claimed damages,
4 and the propriety of class certification. (*Id.* at ¶ 8.) After analyzing the relevant documents and other
5 gathered data, Class Counsel believed that this case was appropriate for resolution via mediation.
6 (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs’
7 claims and attempt settlement. (*Id.*)

8 **C. Settlement Efforts**

9 On July 25, 2024, the Parties attended an all-day mediation session with David Perrault,
10 Esq., an experienced litigator and mediator in the field of wage and hour class actions. (Kim Decl.,
11 ¶ 9.) During mediation, counsel for Plaintiffs and Defendants discussed all aspects of the case,
12 including the risks of continued litigation and the risks to all parties of proceeding with a class
13 certification motion, as well as the merits of the primary claims in this case. (*Id.*) Following
14 mediation, the Parties accepted a mediator’s proposal outlining general settlement terms. (*Id.*) The
15 Parties continued to work together on a long-form stipulated Settlement Agreement following
16 mediation, which resulted in the Settlement Agreement before the Court for approval. (*Id.*)

17 From Class Counsel’s review of the strengths and weaknesses of the case and the risks and
18 delays posed by further litigation, Class Counsel believes that the Settlement is fair and reasonable.
19 (*Id.* at ¶ 10.) Further, the Settlement Agreement was the product of a non-collusive settlement
20 process in which the Parties were forced to make significant compromises in the interest of reaching
21 a full and complete settlement of the lawsuit. (*Id.*)

22 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

23 **The Class/Class Period and Aggrieved Employees/PAGA Period:** The Settlement
24 Agreement defines the “Class” as “all current and former California non-exempt employees of
25 Defendants and/or any of the California Entities who performed work between August 9, 2019,
26 and the date upon which the Court has given preliminary approval to the Settlement.” (Kim Decl.,
27 Exhibit 1, Settlement Agreement, ¶ I.6.) The Settlement Agreement also defines “PAGA Group”
28 and “Aggrieved Employees” as “all current and former non-exempt employees who performed

work for Defendants or any of the California Entities in California between August 9, 2022, and the date upon which the Court has granted preliminary approval of Settlement.” Each member of the PAGA Group is a “PAGA Member.” (*Id.* at Exhibit 1, Settlement Agreement, ¶ I.26.)

Key Financial Terms: Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay \$2,250,000.00 (“Gross Settlement Amount”) on a non-reversionary basis paid out in two equal payments of \$1,125,000. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ I.16, III.10.) In addition to and separate from the Gross Settlement Amount, Defendants will pay the employers’ portion of any payroll taxes on the wage allocation portion of the individual settlement payments to Class Members. (*Id.*)

The Net Class Settlement Fund, or “NCSF” available for distribution to Class Members, is the Gross Settlement Amount, less Attorneys’ Fees and Costs, Settlement Administration Costs, Named Plaintiffs’ Service Payments, and the PAGA Payment, and less applicable taxes. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ I.21.) These amounts are detailed as follows:

- Attorneys’ Fees and Cost Award: Up to 35% of the Gross Settlement Amount, or **\$787,500.00**, to Class Counsel as attorneys’ fees for the litigation and resolution of this Action and up to **\$45,000.00** for actual costs incurred in this Action. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ III.13);
- Service Payment to Named Plaintiffs: Up to **\$20,000.00** to each Plaintiff as an award for their service as a class representative and in exchange for a General Release of all Claims against Defendants and the Released Parties (Kim Decl., Exhibit 1, Settlement Agreement, ¶ III.12);
- Settlement Administration Costs Payment: A not-to-exceed amount of **\$10,000.00** to the Settlement Administrator for its costs of administration of the Settlement (Kim Decl., Exhibit 1, Settlement Agreement, ¶ III.14);
- PAGA Penalties Payment: **\$200,000.00** for settlement of claims for civil penalties under PAGA, with 25% (\$50,000.00) allocated to the Aggrieved Employees (“Individual PAGA Payments”) and 75% (\$150,000.00) allocated to the LWDA (“LWDA PAGA Payment”) (Exhibit 1, Settlement Agreement, ¶ III.17).

1 If the Court approves the above allocations from the Gross Settlement Amount, the Net Class
2 Settlement Fund (“NCSF”) is estimated to be **\$1,167,500.00**. (Kim Decl., at ¶ 12.) Twenty percent
3 (20%) of the NCSF will be allocated to the settlement of wage claims (the “Wage Component”) and
4 will be subject to tax withholding and reported on an IRS W-2 Form. (Kim Decl., (Exhibit 1,
5 Settlement Agreement, ¶ III.18(b)) Each Class Member’s share of the Net Class Settlement Fund
6 (“Individual Gross Settlement Payment”) shall be calculated by dividing the NCSF by all Class
7 Members based on the number of Workweeks each Class Member worked during the Class Period.
8 The Settlement Administrator shall divide the NCSF by the total number of Workweeks for all
9 Participating Class Members resulting in a value for each week worked by the Participating Class
10 members during the Class Period (“Workweek Value”). The Settlement Administrator shall then
11 multiply the number of Workweeks for each Participating Class Member by the Workweek Value.
12 All Class Members will be entitled to payment for at least one Workweek. (Kim Decl., Exhibit 1,
13 Settlement Agreement, ¶ III.18(a)). The “Individual Settlement Payment” means the amount of each
14 Participating Settlement Class Member’s Gross Individual Settlement Payment, less employee
15 portions of state and federal withholding taxes, including the employee FICA, FUTA and SDI
16 contributions and any other applicable payroll deductions required by law as a result of the payment
17 of the amount allocation to such Participating Settlement Class Member under the terms of
18 Settlement. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ I.(18)). Defendants’ share of payroll
19 taxes will be paid separately from and in addition to the Gross Settlement Amount and will not be
20 deducted from the Gross Settlement Amount. (Kim Decl., Exhibit 1, Settlement Agreement, ¶
21 I.(16)).

22 For the approximately 1,636 Class Members (if no exclusions), the average Gross Individual
23 Settlement Payment, using a straight average, is \$713.63. The estimated average amount each Class
24 Member will receive per workweek based on the Net Settlement Amount and 90,841 workweeks is
25 \$12.85. (Kim Decl., ¶ 12.) If the Court approves a lesser amount for any of the above requested
26 allocations from the Gross Settlement Amount, the remainder will revert to the Net Class Settlement
27 Fund to be distributed to Class Members. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ III.12-
28 14.)

1 **No affirmative duties imposed on Class:** The Settlement Agreement does not impose any
2 affirmative duties on Participating Class Members. (Kim Decl., ¶ 73.) No claim form is required
3 to participate in the Settlement. (*Id.*) Individuals who wish to opt out or object may do so. (*Id.*)

4 **Class Notice Procedures:** Not later than fourteen (14) calendar days after the Court grants
5 Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Settlement
6 Administrator in the form of a Microsoft Excel spreadsheet. (Kim Decl., ¶ 13, Exhibit 1, Settlement
7 Agreement, ¶¶ I.8, III.16(d).) The Settlement Administrator will mail the Class Notice to all Class
8 Members via first-class regular U.S. mail in no event later than ten (10) days following the receipt
9 of Class Data. (Kim Decl., 13, Exhibit 1, Settlement Agreement, ¶ III.16(e), III.19(a).) Before
10 mailing the Class Notice, the Settlement Administrator will update Class Member addresses to the
11 extent possible, by checking the U.S. mail registry. (*Id.*) The Class Notice includes a summary of
12 the case and settlement terms and provides Class Members with detailed instructions on how to
13 exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay
14 periods attributed to each Class Member per Defendant's records. (Kim Decl., ¶ 13.)

15 Any mailing returned to the Settlement Administrator as undeliverable will be sent within
16 five (5) days via first-class U.S. mail to the forwarding address affixed thereto, if applicable. (Kim
17 Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ III.19(c).) If no forwarding address is provided, the
18 Settlement Administrator will attempt to determine the correct address again using a single skip-
19 trace, computer or other search using the name, address, and/or Social Security number of the
20 individual involved. (*Id.*) Class Members will have sixty (60) days from the mailing of the Class
21 Notice ("Opt-Out/Objection Deadline Date") to opt out of or object to the Settlement or to dispute
22 the number of Workweeks and/or pay periods and an additional fourteen (14) days if they have Class
23 Notices re-mailed to them.¹ (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ III.19(b).)

24 **Settlement Administrator:** The parties selected Simpluris, Inc. ("Simpluris") to handle the
25 notice and administration of the Settlement based on the competitiveness of their bid, their
26 competency and experience in administering settlements, and their track record of responsiveness
27

28 ¹ Counsel for the Parties have agreed via Amendment to extend the response deadline by 14 days for Class Members who have Class Notices re-mailed to them.

1 to the parties' counsel and settlement class members. (Kim Decl., ¶ 13, Exhibit 1, Settlement
2 Agreement, ¶¶ I.34, III.16(b).) §7.1). Simpluris has experience administering class action and
3 PAGA settlements, has procedures in place to protect the security of class data, adequate insurance
4 in the event of a data breach or defalcation of funds, and is qualified to administer the Settlement.
5 (See Declaration of Patrick Ivie, which also includes a breakdown of the anticipated costs of class
6 notice.) In addition, Simpluris will have a website for Class Members to review and reference for
7 details regarding the Final Approval Hearing and any Final Approval Order and Judgement. (Kim
8 Decl., ¶ 13.) If the Court grants final approval of the Settlement, a copy of the Final Approval Order
9 and Judgment will be posted on this website for Class Members to review. (*Id.*) The website will be
10 provided to Class Members in the Class Notice that is mailed to them. (*Id.*)

11 **Funding and Payment of Settlement:** Defendants shall fully fund the Gross Settlement
12 Amount and the amounts necessary to fully pay Defendant's share of employer-side payroll taxes
13 by transmitting all such funds to the Administrator on or before April 1, 2026. Within (30) calendar
14 days after the Effective Date, Defendants shall deliver an initial payment of \$1,125,000, equivalent
15 to one-half of the Gross Settlement Amount (the "Initial Deposit"), into the Qualified Settlement
16 Fund ("QSF") created by the Settlement Administrator. Defendants shall then deliver a second
17 payment of \$1,125,000 into the QSF, plus Defendants' share of any employer-side payroll taxes
18 required, within one hundred eighty (180) calendar days from the date of the Initial Deposit or by
19 April 1, 2026, whichever is earlier. However, notwithstanding the foregoing, in the event the
20 Effective Date occurs on or after March 2, 2026, Defendants shall deposit the entire GSA and all
21 employer-side payroll taxes into the QSF in a single lump-sum payment within thirty (30) calendar
22 days of the Effective Date. The "Effective Date" shall mean and refer to when all of the following
23 events have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the
24 Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following
25 occurrences: (i) if no Participating Class member objects to the Settlement, the day the Court enters
26 Judgment; (ii) if one or more Participating Class Members objects to the Settlement, the day after
27 the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment
28 is filed, the day after the appellate court affirms the Judgment and issues a remittitur. (Kim Decl.,

Exhibit 1, Settlement Agreement, ¶¶ III.12, I.12.)

Within ten (10) days after Defendant fully funds the Gross Settlement Amount,² the Settlement Administrator will issue payments to Class Members pursuant to the terms of the Settlement Agreement. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ III.21(b).) Checks will be mailed by First Class U.S. Mail to each Class Member and will be valid for 180 calendar days from the date of mailing. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ III.22.) Any non-negotiated checks after 180 days from issuance shall be cancelled, and the funds associated with such cancelled checks, plus any accrued interest that has not been distributed, shall be tendered by the Settlement Administrator to the *cy pres* beneficiary, California CASA, 3525 Del Mar Heights Road #243, San Diego, CA 92130. (*Id.*)

Class Member Release: The Class Member release of claims will not become effective until after the Effective Date has passed and Defendants have fully funded the Gross Settlement Amount including their share of payroll taxes.³ (Kim Decl., Exhibit 1, Settlement Agreement, ¶ III.3). The release period ends on the date of the Court’s order granting preliminary approval of Settlement.⁴ Further, the release of claims is tailored in scope to claims that were asserted or could have been asserted based on the facts in the Operative Complaint⁵ that arose during the Class Period.

Release by the PAGA Group: The PAGA Group Member release of claims will not become effective until after the Effective Date has passed and Defendants have fully funded the Gross Settlement Amount including their share of payroll taxes. (Kim Decl., Exhibit 1, Settlement Agreement ¶ III.4). The release period ends on the date of the Court’s order granting preliminary approval of Settlement.⁶ (Kim Decl., Exhibit 1, Settlement Agreement ¶ III.4). Further, the release

² Assuming the Court has signed the order finally approving the Settlement, otherwise within ten (10) days of a Court-signed final approval order in the event the Defendant has pre-funded the Gross Settlement Amount per the terms of the Agreement.

³ Counsel for the Parties have agreed to have the releases by Participating Class Members and PAGA Group Members effective upon Defendants fully funding the Gross Settlement Amount and their share of payroll taxes.

⁴ The Parties will stipulate and inform the Court prior to the preliminary approval hearing of Defendants’ election to roll back the Class Period under the escalator clause if said option to do so is exercised.

⁵ Counsel for the Parties have agreed to reference the “Operative Complaint” rather than “Action” for purposes of the Released Class Claims.

⁶ See footnote 3.

of claims is tailored in scope to claims for PAGA civil penalties that are asserted or which could have been asserted based on the facts alleged in the PAGA Notices to the LWDA that accrued during the PAGA Period. (*Id.*) The Class Notice addresses the fact that a PAGA Group Member may not opt out of the PAGA Settlement.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-75.) The decision to certify a class is a procedural one and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

To certify a settlement class, the Court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704. These criteria are met here for the reasons set forth below.

A. There Is a Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class, and the means available for identifying class members. *See Vasquez, supra*, 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271. Class members are “ascertainable” when they may be readily identified without unreasonable expense or time.

Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all current and former California non-exempt employees of Defendants and/or any of the California Entities who performed work between August 9, 2019, and the date upon which the Court has given preliminary approval to the Settlement. Defendant has identified 1,636 Class Members based on a review of its

1 payroll and personnel records. (*Id.*, ¶ 15.)

2 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

3 **B. There Is a Well-Defined Community of Interest**

4 A community of interest is established by the predominance of common issues of law and
5 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

6 [D]oes not depend upon an identical recovery, and the fact that each
7 member of the class must prove his separate claim to a portion of any
8 recovery by the class is only one factor to be considered ... The mere
9 fact that separate transactions are involved does not of itself preclude
10 a finding of the requisite community of interest so long as every
11 member of the alleged class would not be required to litigate numerous
12 and substantial questions to determine his individual right to recover
13 subsequent to the rendering of any class judgment which determined
14 in plaintiffs' favor whatever questions were common to the class.

15 *Id.* at 809.

16 Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that common
17 issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the Class is
18 united in its proof. (Kim Decl., ¶ 16.) Because Plaintiffs have alleged a single scheme, “the relevant
19 proof [does] not vary among class members” and “clearly presents a common question fundamental
20 to all class members.” *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172
21 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169
22 F.R.D. 493, 518). California courts show “no hesitancy” in inferring class-wide causation, class-
23 wide injury, and class-wide damages when a common course of action has been shown. *B.W.I.*
24 *Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference “eliminates the need for each class
25 member to prove individually the consequences of the defendants’ actions to him or her.” *Id.* at 1351
26 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

27 This action involves, *inter alia*, a determination about Defendants’ alleged failure to pay
28 minimum wages, failure to pay overtime wages, failure to pay double-time wages, failure to pay for
off-the-clock work, failure to provide meal periods or meal period premium payments, failure to
provide rest periods or rest period premium payments, failure to provide accurate itemized wage

1 statements, failure to properly calculate, provide and pay paid sick leave, failure to properly
2 calculate, provide and pay COVID-19 supplemental paid sick leave, failure to reimburse business
3 expenses, failure to timely pay wages due during employment, and failure to pay all wages due upon
4 termination of employment, and largely derivative claims under the UCL and PAGA. (Kim Decl.,
5 ¶ 16.) Plaintiffs contend Defendants' practices affected Class Members in the same way and presents
6 questions that are suitable for common adjudication because all Class Members were subject to the
7 same employment policies and practices. (*Id.*) The outcome of litigation in this matter depends upon
8 questions that are common to Class Members. (*Id.*)

9 **C. The Named Plaintiffs' Claims Are Typical**

10 A class representative's claims are typical when they arise from the same event, practice, or
11 course of conduct that gives rise to the claims of other putative class members, and if their claims
12 rest on the same legal theories. The class representative's claims must be "typical" but not
13 necessarily identical to the claims of other class members. It is sufficient that the representative is
14 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
15 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
16 (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class
17 representative must have identical interests with the class members."). Thus, it is not necessary that
18 the class representative should have personally incurred all the damages suffered by each of the
19 other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

20 Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that
21 Plaintiffs' claims are typical of Class Members' claims because they arose from the same factual
22 basis and are based on the same legal theories. (Kim Decl., ¶ 17.) Thus, Plaintiffs' claims are typical
23 of the claims of the putative Class. (*Id.*)

24 **D. Adequacy of Class Counsel and Class Representative**

25 As detailed below, Class Counsel are experienced in class actions, have represented their
26 clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 18, 74-80.) The Class
27 Representatives' interests are aligned with those of the Class Members, as they have suffered the
28 same injuries as the Class Members and have no conflicts of interest. (*Id.* at ¶ 18.) Plaintiffs have

1 not shrunk from this responsibility. (*Id.*) Indeed, Plaintiffs have devoted a substantial amount of
2 time and energy to litigating this Action and effectuating a settlement. (*Id.*) Therefore, Class Counsel
3 and the Class Representatives are adequate.

4 **E. Predominance and Superiority**

5 Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 19.) As
6 explained, *supra*, Plaintiffs allege there are common issues of law and fact given that Plaintiffs and
7 all Class Members were subjected to the same policies and pay practices during the relevant time
8 period. (*Id.*) Plaintiffs and Class Members seek meal and rest premiums, unpaid wages and overtime,
9 reimbursement for business expenses, and penalties for work performed as non-exempt employees
10 for Defendant. (*Id.*) Plaintiffs allege that these issues are suitable for common adjudication because
11 all Class Members were allegedly subject to the same employment policies, and Plaintiffs contend
12 the practices applied uniformly to all Class Members. (*Id.*)

13 Plaintiffs contend that class resolution is superior to other available methods for the fair and
14 efficient adjudication of the controversy as there is little interest or incentive for Class Members to
15 individually control the prosecution of separate actions. (*Id.* at ¶ 20.) Although the alleged injury
16 resulting from Defendants' policies and practices are real and significant, the cost of individually
17 litigating each such case against Defendant would easily exceed the value of any relief that could
18 be obtained by any one Class Member individually. (*Id.*) If Class Members are forced to litigate
19 their claims individually, it would potentially result in over 1,636 individual actions against
20 Defendants, each for relatively small amounts. (*Id.*) Hence, an individual suit would prove
21 uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id.*)

22 **VI. THE THREE-STEP APPROVAL PROCESS**

23 California Rule of Court 3.769 requires court approval of the settlement of class action
24 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure
25 for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44 (1993); *Dunk*
26 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is the dissemination
27 of notice of the settlement to all Class Members. *Id.* The third step is a final settlement approval
28 hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of

1 the settlement may be presented and Class Members may be heard. *Id.*

2 The determination of whether a settlement should be preliminarily approved requires, “basic
3 information about the nature and magnitude of the claims in question and the basis for concluding
4 that the consideration being paid for the release of those claims represents a reasonable
5 compromise.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. However, the
6 record need not contain an explicit statement of the maximum theoretical amount that the class could
7 recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399,
8 409 (“*Kullar* does not... require any such explicit statement of value; it requires a record which
9 allows “an understanding of the amount that is in controversy and the realistic range of outcomes of
10 the litigation.”). “If the proposed settlement appears to be the product of serious, informed, non-
11 collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment
12 to class representatives or segments of the class, and falls within the range of possible approval, then
13 the court should direct that notice be given to the Class Members of a formal fairness hearing, at
14 which evidence may be presented in support of and in opposition to the settlement.” *Manual for*
15 *Complex Litigation*, Second § 30.44, at 229.

16 In deciding whether to approve a proposed class action settlement, the Court must find that
17 a proposed settlement is “fair, adequate, and reasonable” and falls within the “range of approval.”
18 *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as “the strength
19 of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
20 maintaining class action status through trial, the amount offered in settlement, the extent of
21 discovery completed and the stage of the proceedings, the experience and views of counsel, the
22 presence of a governmental participant, and the reaction of the Class Members to the proposed
23 settlement.” *Id.* The Settlement satisfies all of these requirements.

24 **VII. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

25 The Court’s decision to preliminarily approve a settlement is granted great deference as an
26 exercise within its broad discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
27 234-235. As a matter of public policy, courts both encourage the use of the class action device and
28

1 favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429,
2 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a failure
3 of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276
4 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation
5 is concerned.”). Applying the above factors, the proposed settlement provides a substantial benefit
6 to the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

7 **A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.**

8 The proposed Settlement was reached as a result of arm’s length negotiations after the
9 completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 22.) The
10 negotiations have been, at all times, adversarial and non-collusive in nature. (*Id.*) *See*, 4 Newberg
11 on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, “a court will
12 presume that a proposed class action settlement is fair when certain factors are present, particularly
13 evidence that the settlement is the product of arms-length negotiation, untainted by collusion.”).
14 Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge
15 that there were substantial risks and uncertainty in proceeding with litigation. (*Id.*) As discussed
16 below, Defendants presented multiple defenses to Plaintiffs’ claims, both on the merits and with
17 respect to class certification. (*Id.*) Thus, while Plaintiffs were prepared to litigate these claims
18 through class certification, and ultimately trial, success was far from guaranteed. (*Id.*) Assistance
19 from a well-respected mediator ensured negotiations between the Parties were non-collusive and
20 well-informed. (*Id.*)

21 **B. Extent of Discovery and Stage of Proceedings**

22 As stated above, the Parties engaged in substantial informal discovery before the Settlement
23 was reached to allow them to fully evaluate the class claims and Defendants’ defenses. (*Id.* at ¶ 23.)
24 This litigation has reached the stage where the Parties have a clear view of their respective strengths
25 and weaknesses in this case. (*Id.*)

26 **C. The Strength of Plaintiffs’ Case and the Risk, Expense, Complexity, and**
27 **Likely Duration of Any Litigation.**

28 Plaintiffs allege that Defendants required Plaintiffs and Class Members to work off the clock

1 and failed to record accurate time worked, failed to pay them at the appropriate rates for all hours
2 worked, failed to pay all wages due and owing at termination or resignation, and provided inaccurate
3 wage statements that. Plaintiffs allege that Defendants also failed to provide Plaintiffs and Class
4 Members with lawful meal and rest periods, as they were required to remain under Defendants'
5 control and were not provided with the opportunity to take full uninterrupted and duty-free rest
6 periods and meal breaks. (*Id.* at ¶ 24).

7 Plaintiffs allege that Defendants failed to pay Plaintiff and Class Members at least minimum
8 wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in
9 a day and 40 hours in a week. (Kim Decl., ¶ 25.) Specifically, Plaintiffs allege that Defendants
10 required Plaintiffs and Class Members to scan fingerprints into an electronic timekeeping system,
11 but to also list total hours for the shift that both automatically deducted for a meal period of 30
12 minutes and rounded their total hours worked down to the nearest quarter hour to their detriment.
13 Plaintiffs further allege that Defendants also rounded their electronically captured timekeeping
14 entries. Plaintiffs also allege that Defendants required them to perform work off the clock before
15 their scheduled shift start times by forcing them to undergo COVID screenings before entering their
16 facilities and before scanning and clocking in which required waiting in lines. (*Id.*) Moreover,
17 Plaintiffs and Class Members were also required to work or otherwise remain under Defendants'
18 control after their shift end times, including on site and through after hours work related
19 communications and other work requirements. Defendants also required Plaintiffs to wait to be
20 contacted by Defendants in an on-call status to see if they would be required to cover for absent
21 employees. (*Id.*) Finally, Plaintiffs also allege that Defendants failed to incorporate all forms of
22 remuneration, i.e. bonuses, and/or shift differential pay, into the regular rate of pay used to calculate
23 and pay overtime wages to Class Members. (*Id.* at ¶ 43.)

24 Defendants contend that they did not require off the clock work, paid for all reported hours
25 worked, that Class Members were instructed and required to record all hours worked, that Class
26 Members were required to review their hours for the period and list them at the bottom of a time
27 sheet which would display regular and overtime hours separately, and that they were required to
28 sign it along with their department head after the total hours entered for each day had been reviewed

1 and double checked, that any alleged off the clock work was performed without Defendants'
2 knowledge, and that they paid wages at the proper rates. (Kim Decl., at ¶ 44.) Defendants also argue
3 that given their written policies and practices, any unrecorded hours are likely subject to
4 individualized inquiry and unlikely to be certified. (*Id.*) Given the difficulty in certifying this claim,
5 Class Counsel applied a significant discount to damages based on this theory. (*Id.*)

6 Plaintiffs also allege that Defendants failed to provide Plaintiff and Class Members with
7 lawful first and second meal periods. (Kim Decl., ¶ 27.) For example, Plaintiffs allege that their and
8 Class Members' meal periods were continually interrupted by work demands or instructions from
9 managers regarding work matters. Plaintiffs also alleged that meal periods were often not provided
10 until after five hours into the work shift. Plaintiffs allege that Defendants would require Plaintiffs to
11 clock out for a meal period and continue working to complete required job duties. The electronic
12 timekeeping system, Plaintiffs allege, would not permit Plaintiffs and Class Members to record a
13 meal period end time that was less than 30 minutes. (*Id.*) Plaintiffs allege that to the extent Plaintiffs
14 and Class Members were required by Defendants to work over ten hours on a work shift, Defendants
15 also failed to provide second meal periods. (*Id.*)

16 Defendants contend that Class Members were given a reasonable opportunity to take their
17 meal periods, and when compliant meal periods were not provided, Defendants provided premium
18 pay to Class Members as reflected in their time and pay records. (Kim Decl., ¶ 28.) Defendants also
19 contend that the relevant Class Members signed valid meal period waivers. (*Id.*) Defendants further
20 contend that the meal break claim requires individualized inquiries which would preclude class
21 certification. (*Id.*) If Defendants' contentions are proven true and prevail in trial, the likely outcome
22 would be no recovery for the Class Members on the meal break claim. (*Id.*)

23 Plaintiffs also contend that Defendants did not provide Class Members with paid 10-minute
24 rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 29.) Plaintiffs contend that
25 job requirements and duties required of Class Members consistently manifested in a failure to
26 authorize and permit Class Members to take all their required rest breaks. Specifically, they were
27 either not authorized or permitted the opportunity to take a rest break, or were required to remain
28 under Defendants' control and respond to calls and instructions from management and job and

1 customer demands while attempting to take one. (*Id.*)

2 Defendants maintain that they did provide a reasonable opportunity for Class Members to
3 take duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not
4 provided. (Kim Decl., ¶ 30.) Considering that unlike meal periods, rest breaks need not be recorded,
5 these violations would likely be difficult to prove at trial and potentially depress the damages
6 ultimately awarded. (*Id.*) Therefore, Class Counsel applied significant and appropriate discounts to
7 the rest break claim. (*Id.*)

8 Additionally, Plaintiffs allege that Defendants required Plaintiffs and Class Members to
9 incur certain expenses for their jobs with Defendants, including but not limited to use of their
10 personal cellular phones for work purposes, and maintaining uniforms with company logos without
11 reimbursement. (Kim Decl., ¶ 31.) Defendants maintained that Class Members were not required to
12 incur such expenses, that such expenses were not reimbursable under the law, and that
13 individualized issues relating to this claim would preclude class certification. (*Id.*)

14 As for the wage statement and waiting time penalties claims, Plaintiffs allege that
15 Defendants consistently failed to provide Class Members with accurate and itemized wage
16 statements and all wages due to Class Members upon termination of their employment with
17 Defendants. Defendants contend that these claims are merely derivative of the underlying claims
18 and that Plaintiffs and Class Members would be unable to first establish liability for the underlying
19 claims for the reasons described above. (Kim Decl., ¶ 32.) Defendants further contend that even if
20 they could first establish liability for the underlying claims, Plaintiffs and Class Members would be
21 unable to establish that Defendant's conduct was willful and knowing as required by the relevant
22 statutes since Defendants acted in good faith to provide accurate wage statements and pay all wages
23 due to Plaintiffs and Class Members. (*Id.*) Thus, Defendants contend that the wage statement and
24 waiting time penalties claims to have little to no value. (*Id.*)

25 Plaintiffs also allege that Defendants violated Labor Code Section 246 by not providing all
26 required paid sick days to Plaintiffs and Class Members, including to provide COVID-19
27 supplemental sick leave as required under Labor Code Sections 248.1 and 248.2, which Defendants
28 deny. Plaintiffs allege that Defendants paid shift differentials, nondiscretionary commissions,

1 incentive pay, and/or nondiscretionary bonuses to Plaintiff and Class Members but Defendants
2 failed to include these forms of remuneration in the regular rate of pay upon which sick pay was
3 calculated and paid. Accordingly, Plaintiffs allege that Defendants paid sick leave to Plaintiff and
4 Class Members at a lower rate in violation of the law. Defendants contended that they provided paid
5 sick leave at the proper regular rates when applicable. Defendants further contended that bonuses
6 were discretionary in nature and not required to be included in the regular rate at all. (Kim Decl., ¶
7 33.)

8 Further, Defendants contend that the PAGA claim is also derivative of the underlying claims
9 in the Action and ultimately fails because the underlying claims have no merit. (Kim Decl., ¶ 34.)
10 Defendants also contends that even if Plaintiffs and Class Members could establish Labor Code
11 violations, the Court has the discretion to award less than the maximum civil penalty amount and
12 would award substantially less civil penalties here because Defendants acted in good faith to comply
13 with the relevant wage and hour laws and any violations were minor and technical in nature. (*Id.*)

14 Defendants generally deny all claims alleged in the Action and further denies class and/or
15 representative treatment is appropriate for any purpose other than this Settlement and that it
16 complied with all applicable laws. (Kim Decl., ¶ 35.) However, Defendants have concluded that
17 further litigation would be protracted and expensive and that it is desirable that the Action be fully
18 and finally settled in the manner and upon the terms and conditions herein. (*Id.*)

19 As stated above, while Plaintiffs and Class Counsel contend the claims asserted in the Action
20 have merit, they also acknowledge the expense, delay, and risks of continued litigation. (Kim Decl., ¶
21 35.) Although the Parties engaged in significant formal and informal discovery in advance of
22 mediation, the Parties still had significant discovery to complete had the matter not settled. (*Id.*)
23 This would have required the expenditure of substantial time and resources by both Parties that
24 would have very likely spanned several years. (*Id.*) Even if Plaintiffs were to certify the classes, the
25 Parties would incur considerably more attorney fees and costs through a possible decertification
26 motion, trial, and possible appeal. (*Id.*) This Settlement avoids those risks and the accompanying
27 expense. (*Id.*)
28

1 **D. The Risk of Maintaining Class Action Status Through Trial.**

2 Plaintiffs have not yet filed their motion for class certification, and as such, the extent to
3 which Plaintiffs' proposed classes are certifiable is somewhat speculative. (*Id.* at ¶ 37.) Absent
4 settlement, there is a risk that there would not be a certified class at the time of trial, or if there were,
5 it could consist of a significantly smaller group of employees than the proposed Settlement Class,
6 resulting in less overall recovery. (*Id.*)

7 Finally, in class actions, decertification is always a possibility, and there is always a risk that
8 a trial of this magnitude can become unmanageable. (*Id.* at ¶ 37.) Cases like *Duran v. U.S. Bank*
9 *Nat. Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class
10 actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id.*) A
11 class trial would have also required expert witnesses, the accrual of extensive litigation costs, and
12 the commitment of extensive further time and financial resources. (*Id.*) Finally, given the complexity
13 and unsettled nature of the issues, it is somewhat likely that any outcome at trial would have resulted
14 in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who
15 have already waited years for resolution in this matter. (*Id.*) Risk and legal uncertainty must be dealt
16 with in any litigation, and this Settlement was the product of compromise accounting for those risks
17 and uncertainty. (*Id.*)

18 **E. The Presence of a Governmental Participant**

19 Class Counsel will be submitting the Settlement Agreement and this Motion to the LWDA
20 concurrently with the filing of this Motion pursuant to Labor Code § 2699(1)(2). (*Id.* at ¶ 38.)

21 **F. The Amount Offered in Settlement is Fair Given the Potential Value of the**
22 **Claims.**

23 If the Court approves the requested allocations from the Gross Settlement Amount of
24 \$2,250,000.00 as addressed above, the Net Settlement Amount is estimated to be \$1,167,500. (Kim
25 Decl., ¶ 12.) There are approximately 1,636 total Class Members. (*Id.*) If there are no exclusions
26 from the Class, the average gross Individual Settlement Payment, per Class Member, using a straight
27 average, is \$713.63. (*Id.*) The estimated average amount each Class Member will receive per
28 workweek based on the Net Settlement Amount and 90,841 workweeks is \$12.85. (*Id.*)

1 Based on an analysis of Plaintiffs' time and pay records and a sampling of time and pay
2 records for the Class, Plaintiffs estimated the potential realistic exposure for the main claims as
3 follows: **\$438,405.50** for unpaid wages claims, including minimum and overtime wages, due to off
4 the clock work and rounding; **\$722,031.50** for meal period violations; **\$79,622.14** for rest period
5 violations; **\$415,760.00** for wage statement penalties; **\$25,887.00** for unpaid sick pay; **\$833,356.80**
6 in waiting time penalties; **\$65,440.00** for unreimbursed business expenses; and **\$200,000.00** for
7 PAGA penalties. (*Id.* at ¶¶ 41-64.) As such, the total estimated realistic exposure Defendants could
8 face is **\$2,780,502.94**. (*Id.* at ¶ 67.)

9 The Gross Settlement Amount of \$2,250,000.00 represents a recovery for the Class of
10 approximately 80.92% of the total realistic exposure Plaintiffs estimated that Defendants could face
11 on the primary claims in this case. (*Id.*) Plaintiffs and Class Counsel submit that this is an optimal
12 result in the face of uncertainty and the prospects of protracted and contested litigation through class
13 certification, summary judgment, and trial, and particularly in light of all of the factors described
14 above. (*Id.*)

15 **G. A Balance of Risk Factors and Kullar Analysis Support Approval**

16 In deciding whether to approve the settlement, the Court must balance these risk factors
17 against an "understanding of the amount in controversy and the realistic range of outcomes of the
18 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI*
19 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop
20 short of the detailed and thorough investigation that it would undertake if it were actually trying the
21 case" *Munoz*, at 408. Plaintiffs' counsel used the comprehensive data and documents provided
22 to perform an analysis of the potential exposure Defendants faced on Plaintiffs' main class-wide
23 claims, establishing the realistic range of outcomes in this case. As noted above, the Gross
24 Settlement Amount represents a recovery of approximately 80.92% of the estimated total realistic
25 exposure facing Defendants. (Kim Decl., ¶ 67.)

26 There was a very real prospect that nothing would be recovered by the Class if litigation
27 continued and class certification were ultimately denied. At the same time, further litigation would
28 require the expenditure of significant time and financial resources, and there is always the possibility

1 of adverse developments in the law and the likelihood of extended battles in both the trial court and
2 courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly.

3 **H. Experience and Views of Counsel**

4 Experienced counsel, operating at arm's length, have weighed the strengths of the case,
5 examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel
6 are experienced in class actions, have represented their clients zealously, and have no conflicts of
7 interest. (Kim Decl., ¶¶ 74-80.) Class Counsel submits the Settlement is fair, adequate, and
8 reasonable in view of the risks and other considerations addressed and is well-suited for final
9 approval upon completion of the administration process. (Kim Decl., ¶ 80.)

10 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE** 11 **CLASS MEMBERS.**

12 To be deemed proper, a notice must provide the Class Members with sufficient information
13 to make an informed decision as to whether to accept or object to the settlement. *Mullane v. Central*
14 *Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the Class Members
15 of the pendency of the action; reasonably convey information regarding the settlement and the Class
16 Members' rights, entitlements, and obligations; and affords Class Members the opportunity to
17 present their objections. *Id.*

18 The proposed Class Notice provides all the information a reasonable person would need to
19 make a fully informed decision about the settlement. It will notify all Class Members of the terms
20 of the Settlement, its effect on their rights, their options as Class Members (i.e., participate, object,
21 opt-out, and dispute work weeks), and procedures for exercising those options. (Kim Decl., ¶ 13.)

22 The standard for determining the adequacy of notice is whether it has "a reasonable chance
23 of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50
24 Cal.App.3d 960, 974. Here, the Class Notice will be sent via first-class mail to each of the 1,636
25 Class Members at their addresses from Defendants' records. (Kim Decl., ¶ 13, Exhibit 1, Settlement
26 Agreement ¶¶ I.8, III.16(e), III.19(a).) Within fourteen (14) calendar days after the Court grants
27 Preliminary Approval of the Settlement, Defendants will deliver the Class List and Class Data to
28

1 the Settlement Administrator in the form of a Microsoft Excel spreadsheet. (*Id.*) The Settlement
2 Administrator will mail the Class Notice to all Class Members in no event later than ten (10) days
3 following the receipt of Class Data via first-class U.S. mail. (*Id.*) If a Notice is returned as
4 undeliverable, the Settlement Administrator shall remail said Notices to the forwarding address
5 affixed thereto. If no forwarding address is provided, then the Settlement Administrator shall
6 promptly attempt to determine a correct address using a single skip-trace, computer or other search
7 using the name, address, and/or Social Security number of the individual involved and shall then
8 perform a single remailing. (Kim Decl., ¶ 63, Exhibit 1, Settlement Agreement, ¶ III.19(c).) Class
9 Notice should be approved as the best and most practicable way to ensure the greatest possible
10 number of Class Members will receive notice. (Kim Decl., ¶ 73.)

11 **IX. THE STIPULATED CLASS COUNSEL ATTORNEYS' FEES AND COSTS**
12 **AWARDS ARE REASONABLE AND SHOULD BE APPROVED.**

13 Class Counsel respectfully requests, without opposition from Defendant, a Class Counsel
14 Fees Payment of \$787,500.00 (up to 35% of the Gross Settlement Amount) and a reasonable Class
15 Counsel Litigation Expenses Payment not to exceed \$45,000.00, subject to approval by the Court.⁷
16 (Kim Decl. ¶ 68.)

17 Class Counsel submits it has the requisite experience, knowledge, and resources to serve as
18 Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 74-80.) Class Counsel have
19 incurred substantial hours in prosecuting this Action on a contingency basis and will not receive any
20 compensation for their efforts until recovery is obtained for the Class. (Kim Decl. ¶ 68.) In addition,
21 Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant
22 benefit to the Class. (*Id.*) As such, the requested Class Counsel Attorneys' Fees and Class Counsel
23 Costs Award are reasonable.

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28 ⁷ Plaintiffs have both given informed written consent of the fee splitting agreement between Class Counsel. Class Counsel's fee split agreement with respect to attorneys' fees approved in a settlement is 50% to Sutton Hague Law Corporation, P.C. and 50% to D.Law, Inc.

1 **X. THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE FAIR AND**
2 **REASONABLE**

3 “At the conclusion of a class action, the class representatives are eligible for a special
4 payment in recognition of their service to the class.” 5 Newberg on Class Actions § 17:1 (5th ed.).
5 Courts approve incentive awards to plaintiffs when justified and appropriate to compensate plaintiffs
6 for time, effort, and inconvenience. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 297 (N.D.
7 Cal. 1995). These payments are intended to recognize the time and efforts that the Class
8 Representatives have spent on behalf of the Class. “Courts routinely approve incentive awards to
9 compensate named plaintiffs for the services they provide and the risks they incurred during the
10 course of the class action litigation.” See *Ingram v. The Coca-Cola Company* (N.D. Ga. 2001) 200
11 F.R.D. 685, 694 (quoting *In re Southern Ohio Correctional Facility* (S.D. Ohio 1997) 175 F.R.D.
12 270, 272). In *Coca-Cola*, the court approved service awards of \$300,000 to each named plaintiff in
13 recognition of the services they provided to the class by responding to discovery, participating in
14 the mediation process, and taking the risk of stepping forward on behalf of the class. *Ingram v.*
15 *Coca-Cola Co.* (2001) 200 F.R.D. 685, 694; see also *Van Vranken, supra*, 901 F.Supp. at 299
16 (approving \$50,000 participation award to plaintiffs).

17 Plaintiffs Bessie Fite and Jennifer Martinez are entitled to a reasonable service payment for
18 their efforts and initiative in bringing and helping to prosecute this action. (Kim Decl., ¶ 71.)
19 Plaintiffs spent significant time better apprising themselves of their rights, deciding whether
20 remedial action should be taken and how it should be taken, searching for attorneys, and
21 communicating with Class Counsel. Both Ms. Fite and Ms. Martinez were consistently
22 communicative with counsel, routinely checked-in, and were responsive to Class Counsel’s requests
23 for information for discovery, documentation, and meetings. (*Id.*)

24 Both before and after the filing of this lawsuit, Plaintiffs conferred with Class Counsel on
25 to discuss every aspect of their case. Plaintiffs Fite and Martinez performed the following tasks,
among others:

- 26 • Assisted counsel in investigating and substantiating the claims alleged in this action;
27 • Provided Class Counsel with information about Defendants and about the industry
28 generally;

- Consulted with Class Counsel regarding litigation strategy and monitored the progress of the litigation;
- Produced evidentiary documents to their counsel;
- Identified witnesses;
- Attended mediation on behalf of the Class;
- Reviewed and signed the Settlement Agreement; and
- Delayed payment of their own unpaid wages for over two years while this matter has been litigated.
- Have agreed to general releases of all other claims including alleged individual claims.
- Has already received adverse prospective employment effects as a result of the lawsuit. *See Declaration of Jennifer Martinez ("Martinez Decl.")* ¶ 21.

Kim Decl. ¶ 72.

In agreeing to be the named plaintiff in this litigation, Ms. Fite and Ms. Martinez accepted a number of risks. For example, each accepted the potential risk of being liable for Defendants' costs and potentially the company's fees if the lawsuit was unsuccessful. Further, each risked the potential stigma of being a class representative in a class action labor dispute, which may affect their future employability. *Kim Decl.*, ¶ 73.

Plaintiffs seek an enhancement in the amount not to exceed \$20,000 per Class Representative, or \$40,000 total. Ms. Fite and Ms. Martinez secured a benefit for the Class worth \$2,250,000. In the aggregate, the requested enhancement represents only a small percentage of the settlement consideration. The total amount which Plaintiffs are requesting to be allocated to a service award is approximately 1.8% of the total settlement amount. In light of the foregoing, Class Counsel believes that the \$20,000.00 service awards to the Class Representatives are fair and reasonable. (*Kim Decl.*, ¶ 74.)

XI. THE ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

Plaintiffs respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement;

- 1 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit
2 A;
- 3 3. Consider and determine that the proposed class action settlement as set forth in the
4 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 5 4. Enter an order conditionally certifying the action as a class action for settlement
6 purposes only and preliminarily approving the proposed class action settlement and the Settlement
7 Agreement;
- 8 5. Approve and appoint Emil Davtyan, David Yeremian, Alvin Lindsay, Enoch Kim, and
9 Antonia McKee of D.Law, Inc., and Brett Sutton, Jared Hague, and Brady Briggs of Sutton Hague
10 Law Corporation, P.C., to serve as Class Counsel for settlement purposes;
- 11 6. Approve and appoint Simpluris, Inc. as the Settlement Administrator to handle the
12 notice and claims procedures as set forth in the Settlement Agreement;
- 13 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;
- 14 8. Order Defendant to disclose to the Settlement Administrator the Class Members and
15 PAGA Group Members, and each of their respective first and last names, last-known mailing
16 address, email address, and telephone number, Social Security number, the number of Workweeks
17 during the Class Period in which the Class Members performed work as reflected in Defendants'
18 and California Entities' existing business records, and the number of Pay Periods during the
19 PAGA Periods in which the PAGA Group Members performed work as reflected in Defendants'
20 and the California Entities' existing business records as set forth in the Settlement Agreement;
- 21 9. Order Simpluris to mail the Class Notice to Class Members; and
- 22 10. Set a date for the Final Approval Hearing.

23 Dated: August 7, 2025

D.LAW, INC.

24
25 By /s/ Enoch J. Kim
26 Emil Davtyan
27 David Yeremian
28 Alvin B. Lindsay
Enoch J. Kim
Antonia McKee
Attorneys for Plaintiff and Settlement Class